

**Stow Conservation Commission
Minutes
February 15, 2022**

A meeting of the Stow Conservation Commission was held on February 15, 2022 at 7:30 in the evening remotely VIA Zoom Videoconferencing in accordance with the Governors' Executive Order on Remote Meeting participation.

There were present: Serena Furman
Matt Styckiewicz, Vice Chair, Acting Chair
Jeff Saunders
Liza Mattison
Holly Clack
Doug Morse
Absent: Ingeborg Hegemann Clark

Also Present: Kathy Sferra, Conservation Director
Jacquie Goring, Conservation Assistant
Tom Porcher, Associate Member

Matt Styckiewicz called the meeting to order at 7:30 pm.

Minutes

Serena Furman moved to approve the minutes of February 1, 2022 as amended. Liza Mattison seconded and the motion was approved unanimously (5-0) on a roll call vote.

Appointment – Discussion of Transfer of Gleasondale School Lot – Recreation Director Laura Greenough and Gleasondale Resident Maura Rousseau were present. Sferra noted that the Commission approved the process of transferring the Gleasondale School lot to the Recreation Commission in 2016. Town Counsel has now confirmed that the transfer of the Gleasondale School lot does not need to go to the Legislature under Article 97. Rousseau, a member of the Gleasondale Steering Committee, noted the location of the property and proposed plans for improvements. Rousseau stated that it is more practical for the lot to be under the Recreation Commission and for Recreation to fund the long-term maintenance of the lot. Greenough stated that was supportive. Greenough added that her original hesitation was about the maintenance of the property, but she has confirmed with the Town Administrator that the Highway Department could assist and there is potential funding for the project.

The Commission confirmed the school lot is not currently being used for conservation purposes. Sferra noted that a portion of the property is within the 200' River Front Area. The final proposal will be reviewed to determine if a permit is needed from the Commission for the work. Rousseau confirmed the abutters are supportive of the plan. Sferra stated that if the Commission votes to support the transfer she will work with Greenough and Rousseau to bring a warrant article to annual Town Meeting

conveying the property. *Serena Furman moved to find that the lot is not needed for conservation purposes and submit a warrant article transferring the Gleasondale School lot to the Recreation Commission. Liza Mattison seconded and the motion was approved unanimously (5-0) on a roll call vote with Doug Morse abstaining.*

Doug Morse arrived at 7:40 PM.

Staff and Commission Member Updates

- The Chapter 91 License for 8 Davis was approved. A condition in the license requires the property owner post a sign allowing lateral access along the shoreline.
- Sferra confirmed the new DEP Central Region circuit rider is willing to attend a Commission meeting and confirmed staff from the Waterways program are also willing to attend an upcoming meeting .

Notice of Intent – Renee Murphy – 66 Pine Point – Sferra read the hearing notice and noted that the applicants agreed to extend the 21-day hearing requirement because they were not available to meet sooner. Applicant Renee Murphy and owner Chris Gahagan were present. Murphy reviewed the proposed work which includes regrading an area 28 feet long by one-foot-wide back from the property line and lower it by approximately six inches. Liza Mattison visited the site and reviewed photos and confirmed the stump located within the regrading area will not be removed. Mattison noted that it was difficult to see the area because of snow and ice. Murphy stated that a tree was there for many years then flowers were planted in that area as part of a 2009 Order for retaining wall work. Murphy clarified the plantings were done in 2010 in conjunction with the retaining wall and stair work.

The Commission asked about the purpose of the proposed grading. Murphy stated it is the outcome of a lawsuit with owners of 68 Pine Point Road. Murphy added that the settlement includes a caveat that both parties would agree to the outcome of the Conservation Commission's decision. The Commission asked if any plantings are proposed once the area is regraded and Murphy confirmed they would replace what is there now. The Commission asked what the public benefit is for doing the proposed work in the 35' no disturb buffer. Murphy stated there is no public benefit. The Commission asked if the grading would settle a property line dispute. Murphy stated that it would not, the property line issue was resolved. She stated that the owners of 68 Pine Point claim that a door on the opposite site of the property is rotting due to runoff from the berm. Murphy added that she does not believe the berm is the cause of the issue and grading the berm will not change the drainage. Murphy confirmed she has not asked for an opinion from an engineer. Murphy stated that all of the houses in this area are below street level and water runs off the road and across properties to the lake. Murphy added that there is no need for a survey and a survey was not part of the settlement agreement.

The Commission asked if the work would be completed by hand. Gahagan stated that the house is going through a complete remodel which will include rebuilding the front site of the house which is caving in. An excavator will be needed to do that work and would do the grading work while onsite. Gahagan added that they will be filing with the Commission for the work on the front side of the house as a separate filing. Gahagan added that the grading is a small strip of land that will be moved one foot into their property and will be reshaped so there is no hard cut in the grade. The Commission

confirmed a waiver of the 35' no disturb buffer was filed with the application. Gahagan stated they could not honestly come up with a public benefit.

Gahagan estimated that less than a yard will be graded and spread back into their property within the 25' buffer to Lake Boon. Sferra noted there are no erosion controls shown on the plan. Murphy confirmed they will adhere to any erosion control requirements requested by the Commission. The Commission noted that the additional renovation projects will also need to be permitted. Murphy confirmed they will file separately for those projects; they did not want to include them in the same application that is linked to a lawsuit and cause any delays or complications. Murphy added that whatever the Commission decides, both parties have agreed to support in good faith. The Commission discussed showing erosion controls on the plan. The Commission also expressed concern about work proposed within the 35' no disturb buffer without any public benefit such as restoration with native plantings or removal of invasive species.

John Shea of Mackie, Shea, and Durning, was present representing the owners of 68 Pine Point. Shea reviewed the legal history between the owners of 66 and 68 Pine Point Road regarding property boundaries and elevations which have been resolved through a memorandum of understanding (MOU). Shea stated that the berm isn't the natural topography and there were concrete stairs built over the property line. Shea added that the change of grade down to the house at 68 Pine Point and the rotting at the cellar door are all legitimate concerns of his client. Shea state that the public benefit of the work in the 35' no disturb buffer is that is resolves a dispute between neighbors and the flooding problem on 68 Pine Point. Shea also noted that he sent a letter of support on January 6th and noted concerns that there are no erosion controls shown on the plan and requested the Commission require an as-built plan be submitted with the request for Certificate of Compliance.

The Commission noted concerns about work in the 35' no disturb buffer to resolve a boundary dispute and the lack of a clear public interest. Murphy stated that she disagreed with many of Attorney Shea's comments and the 66 Pine Point property was disturbed in 2010 and they do not know the historic elevations of the property prior to that. Murphy added that the lawsuit will be settled whether the work is permitted or not. The Commission asked if the berm was previously permitted by the Commission. Sferra offered to review the files for 66 Pine Point.

Sferra asked how the regrading of the berm would impact 68 Pine Point. The Commission reviewed an aerial image submitted with the application. Sferra noted that she did not see how water from 66 Pine Point would sheet flow off toward the house at 68 Pine Point, given that it is uphill from the work, especially with the flood storage area that was created on 68 Pine Point as a result of unpermitted work on the retaining wall on the property. The Commission noted that the plan could be revised to include erosion controls and restoration with native plantings as public benefit for the work.

The Commission noted that it would be helpful to see the grading down from the street to determine the impacts the berm regrading may have on flow of surface water runoff to the lake. The Commission added that they want to be sure removing the berm would not increase flooding. Shea clarified that there is no dispute over the property line and the owners of 68 Pine Point have granted an easement

to the owners of 66 Pine Point for the concrete stairs built over the property line. Shea added that he does not believe the stairs or the berm were permitted by the Commission.

Shea also noted that the MOU allows for native plantings which would enhance the 35' no disturb buffer. Gahagan clarified that the berm would not be removed, only moved over one foot. Gahagan added that the house at 68 Pine Point does not have gutters, the rotting door is located at a low point on the property, and he does not believe the berm is contributing to flooding on 68 Pine Point. The Commission clarified the location of the door. Shea stated that the rotting door isn't the issue, the concern is the displacement of rainwater from 66 Pine Point to 68 Pine Point as result of the berm.

The Commission discussed if additional grading plans are needed. Sferra noted the steep grade of both lots, good drainage around the lake, and lack of information about the berm causing water to flow from 66 Pine Point to 68 Pine Point. Sferra stated that with the berm only being moved slightly it will likely lead to the same result and cause more intrusion in the 35' no disturb buffer without any public benefit. The Commission discussed allowing more disturbance of the 35' no disturb buffer to move the berm one foot over. The Commission also discussed the need for erosion controls.

Sferra suggested that she could review the files for historical topography and an additional site visit could be scheduled if the Commission wanted to view the site. Sferra added that this is an unusual situation where an applicant is applying to do work in conjunction with a legal settlement. Sferra added that the proponents of the work are the abutters who allege there are drainage and flooding issues but without data on how much water is being displaced by the berm or where water will be directed once the berm is moved. Sferra offered to review the files and bring what she finds to a continued hearing. Sferra added that the MOU is clear that the work will not go forward unless the Commission approves it, but the Commission's decision could still be appealed. The Commission discussed if they had additional information, would the proposed work meet the interests of the Act and Bylaw and provide a public benefit for work in the 35' no disturb buffer. Some members of the Commission noted that more information on the historic topography and potential public benefit could be helpful.

Shea asked to clarify that the owners of 68 Pine Point are not the applicant, and the MOU includes a plan to restore the lateral transmission of stormwater artificially directed to 68 Pine Point. Shea added that the MOU allows for native plantings and removal of the berm will provide a public benefit by not diverting stormwater onto an abutter's property.

Gahagan asked if he could request a vote tonight. He does not want to continue the hearing. Sferra clarified that the applicant must consent to a continuance and if they are unwilling, the Commission must vote to close the hearing and issue a decision within 21 days. Gahagan stated he would like the Commission to vote based on the information tonight. *Serena Furman moved to close the hearing. Liza Mattison seconded and the motion was approved unanimously (6-0) on a roll call vote.*

Sferra noted that the Commission may work on the decision tonight or continue the decision to the next meeting. Styckiewicz welcomed attendees to stay.

Decision – 302 Boxboro Road – The Commission reviewed a draft Order. The Commission agreed that the applicant has not demonstrated that the log operation meets the definition of land in agricultural use. The Commission also agreed to grant a partial fee waiver. The Commission denied the request to store logs within the 35' no disturb buffer and requested that the Order require the logs be removed from the 35' no disturb buffer and erosion controls be properly installed no later than May 1st. The Commission agreed to allow the access road to be used but expressed concerns about the weight of logging trucks crushing the existing culvert and requested that the culvert be inspected annually.

The Commission requested that the Order require that all stockpiling occur outside the floodplain. The Commission discussed restoration of the area between the 35' no disturb buffer line and the work that has occurred within 25 feet of the wetland. The Commission also expressed concern about future use of the area and the potential need for more robust delineation of the work area. The Commission requested that the Order requires an annual report including an update on the lease agreement. The Commission also requested an erosion control plan for the headwall repair and notification when the headwall work will begin. *Liza Mattison moved to issue the Order of Conditions. Jeff Saunders seconded and the motion was approved unanimously (5-0-1) on a roll call vote with Serena Furman abstaining.*

Decision – 66 Pine Point Road – The Commission briefly discussed the decision and agreed they would like Sferra to draft a denial for review at the next meeting in large part due to the lack of an identified public benefit for the work in the 35' buffer.

Review Draft American Recovery Plan Act (ARPA) Application – Stow Community Gardens and Trail Connection – The Commission reviewed a draft ARPA Project Funding Request for a project at Captain Sargent. The request includes funds for raised garden beds at the Community Gardens to improve accessibility, a parking lot, installation of gates, an additional well, and fencing. The proposal also includes a request to construct a boardwalk across a 350-foot wide wetland to complete a loop trail connecting various conservation lands through the Kunelius property. A letter of support from Garden Steward Mary Coombs has been received and Tom Porcher confirmed the Stow Conservation Trust will also be submitting a letter of support. *Serena Furman moved to submit the ARPA request. Liza Mattison seconded and the motion was approved unanimously (6-0) on a roll call vote.*

At 9:41 PM, Serena Furman moved to adjourn, Holly Clack seconded and the motion was approved unanimously (6-0) on a roll call vote.

Respectfully submitted,

Jacquelyn Goring, Conservation Assistant

Materials Used at Meeting

Meeting Packet

66 Pine Point Road site visit photos

302 Boxboro Road Draft Decision

Draft ARPA application

Conservation Commission Minutes

2-15-22

Approved 3-1-22